

Kartar Singh Vs. Dda

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Court : Delhi

Decided On : Jul-03-2015

Judge : G. S. Sistani

Appellant : Kartar Singh

Respondent : Dda

Judgement :

\$~R-6 * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 5951/2012
Date of judgment 03.07.2015 KARTAR SINGH Petitioner Through : Mr. K. K. Jha, Advocate. Petitioner in person. versus D.D.A. Through : Respondent Mr. Arun Birbal, Advocate. CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL G. S. SISTANI, J.

(ORAL) 1. Petitioner was appointed with the Delhi Development Authority on temporary basis. As per the appointment letter issued on 29.07.1983, the appointment was purely temporary and valid till further orders. On 11.06.1986, an FIR was registered against the petitioner under Sections 308/304/34 of Indian Penal Code at Police Station - Alipur. By an order dated 11.07.1988, the services of the petitioner were terminated.

2. A writ petition bearing No.1049/1989 was filed by the petitioner in this court in the year 1989, impugning the order of termination. During the pendency of this writ petition, the petitioner was acquitted of the offences by the learned trial court vide

judgment dated 14.08.1998 which attained finality. Meanwhile, the writ petition filed by the petitioner, was dismissed on 08.12.2005. However, leave was granted to the petitioner to make a representation on the aspect of discrimination as it was urged by the counsel that similarly situated employees being Perma Nand, Harish Chand and Ramesh had been reinstated. A representation made by the petitioner was disposed of by the D.D.A. on 23.02.2007 by a speaking order. The petitioner was informed that services of Hari Ram (wrongly mentioned as Harish Chand in the order dated 08.12.2005) and Perma Nand stand dismissed while Ramesh Kumar was reinstated for the reason that he was discharged by the court by an order dated 01.12.1997 much prior to the hearing of the writ petition. Aggrieved by the speaking order passed by the D.D.A., the petitioner filed a Contempt Petition being CC (C) 1687/2006. The contempt petition was dismissed by a Single Judge of this court. Thereafter, the petitioner filed a writ petition bearing WP(C)No.911/2012, in which the following order was passed on 15.02.2012:

Counsel appearing on behalf of the petitioner seeks leave to withdraw this writ petition with liberty to approach the Central Administrative Tribunal under the Administrative Tribunals Act, 1985. Leave and liberty granted. dismissed as withdrawn accordingly.

3. The writ petition is and disposed of In view of the fact that the writ petition was dismissed as withdrawn with leave to approach the Central Administrative Tribunal, the petitioner filed O.A. No.1462/2012 before the Central Administrative Tribunal which was dismissed in limini on 03.05.2012 which has led to the filing of the present writ petition.

4. Mr. K. K. Jha, learned counsel appearing for the petitioner has strongly urged before this court that in fact the Central Administrative Tribunal had no jurisdiction to entertain O.A. No.1462/2012, firstly for the reason that the decision in the case of L. Chandra Kumar Vs. Union of India & Ors. reported in AIR 1997 SC1125 has held that High Court has vast powers under Article 226 to entertain matters of this nature and secondly once the High Court had expressed its view in CCP16872006 by order of 30.07.2007, the Central Administrative Tribunal had no choice but to dismiss the O.A.

5. Another ground which has been urged by the learned counsel for the petitioner is that the Single Judge, while deciding the writ petition 1049/1989 on 08.12.2005, completely ignored the legal position that once a person is acquitted in a criminal case, he is liable to be reinstated. Reliance was placed on the case of Nar Singh Pal Vs. Union of Indian & Ors. Reported in 2000 (3) SCC588 and on V. P. Ahuja Vs. State of Punjab 2000 (2) SCT572 and Vaidya Bharti P. Shah Vs. State of Maharashtra 1991 (1) SLR593. It is contended that although the Single Judge had noticed the judgments which had been cited before him, he did not apply the decisions to the facts of the petition. Learned counsel has prayed that the judgment of the Central Administrative Tribunal should be set aside and the petitioner should be reinstated with all back wages.

6. Per contra, Mr. Arun Birbal, learned counsel for DDA submits that the contentions raised by the petitioner with regard to his termination has attained finality by the decision rendered in writ petition 1049/1989 by the judgment dated 08.12.2005. Mr. Birbal further points out that this judgment was accepted by the petitioner and no appeal thereto was filed. It is thus contended that it is not open for the petitioner to assail his termination either before the Central Administrative Tribunal or before this court in view of the decision dated 08.12.2005 where in same very grounds which are sought to be urged today stand negated. Counsel further contends that the Single Judge had only granted leave to the petitioner on the issue of discrimination between the petitioner, Ramesh, Perma Nand and Harish Chand. It is contended that the representation made by the petitioner stands rejected by a well reasoned speaking order which is not subject to judicial review as neither arbitrariness nor malafide have been alleged. He submits that even otherwise in Paragraph 10 of the writ petition, this ground of discrimination stands given up by the petitioner. The learned counsel thus prays that the present writ petition is misconceived and is liable to be dismissed.

7. We have heard learned counsel for the parties. Rule D.B. was issued in the matter on 10.7.2013 and the same has been taken up for final hearing.

8. The facts which we have narrated hereinabove are admitted as the same either form part of the pleadings or annexures which have been filed along with this writ

petition. It is not in dispute that the judgment dated 08.12.2005 has attained finality as no appeal against this decision has been filed. The reading of the judgment dated 08.12.2005 would show that the petitioner had challenged his termination order dated 11.07.1988. The order also shows that the petitioner was employed by the D.D.A. as a Lower Divisional Clerk (L.D.C.) on 16.08.1982. The petitioner along with approximately 500 persons were appointed by a common order which contained the following stipulation :

The appointment of the above officials is purely temporary and valid till further orders.

9. The judgment has taken into account the submissions made by the counsel for the petitioner including the judgments relied upon by him that the employers action in dismissing the employee by an order of termination simply was illegal once the petitioner had been acquitted. We may notice that the learned Single Judge took into account that the services of the petitioner were purely temporary and valid only till further orders. Rule 2(b) of CCS Central Civil Services Rule, 1965 which defines quasi permanent service was also noticed along with Rule 5 of the Temporary Services Rules.

10. Having carefully examined the judgment dated 8.12.2005, we are of the view that the question with regard to termination of the service of the petitioner has attained finality as the writ petition filed by the petitioner assailing the termination was dismissed on 8.12.2005 and no appeal against the same was filed.

11. We may, however, notice that it is only in the concluding paragraph of the judgment dated 8.12.2005, leave was granted to the petitioner to approach the D.D.A. in case D.D.A. had acted in a discriminatory manner. D.D.A. was also directed to pass speaking order. Para 24 of the judgment reads as under :

12. In the light of the foregoing conclusions the reliefs claimed cannot be granted. However, the D.D.A. is directed to consider the case of the petitioner for reinstatement in the event it decides to reinstate any of the three employees who are under suspension namely, Sh. Ramesh, Perma Nand and Sh. Harish Chand. In such an event, if any of the above employees are directed, to be reinstated, the

petitioners request for reinstatement shall be considered and a speaking order shall be passed within three months from such reinstatement of the other employee. Subject to the above directions, the petition is dismissed with no other as to costs.

Based on Para 24 of the judgment, a representation was made by the petitioner which was rejected on 23.02.2007 which led to the filing of a writ petition No.911/2012 before this court which was dismissed as withdrawn, with leave to approach the Central Administrative Tribunal. It has been strongly urged by counsel for the petitioner that the judgment passed by the Central Administrative Tribunal is without any jurisdiction as only the High Court was competent to hear the matter, and thus is liable to be set aside only on this ground. In support of this argument counsel has placed reliance on the decision of L. Chandra Kumar (Supra). This submission of counsel for the petitioner is without any force, as the petitioner had approached the Central Administrative Tribunal to seek the relief prayed for and thus to say that the Central Administrative Tribunal has no jurisdiction over the matter, cannot be entertained.

13. It is sought to be urged before us that the petitioner did not approach the Central Administrative Tribunal voluntarily but as in the WP(C)No.911/2012 the petitioner was forced to approach Central Administrative Tribunal. This submission of counsel for the petitioner is also without any force, as in case the petitioner was aggrieved by the order passed on 15.2.2012 in the Writ Petition No.911/2012, he would have assailed the order.

14. We have extracted in paragraph 2, the order passed by learned Single Judge. Reading of the order would show that the petitioner had in fact sought liberty to withdraw the writ petition, to approach the Central Administrative Tribunal.

15. The judgment in the case of L. Chandra Kumar (Supra), sought to be relied upon by counsel for the petitioner is also in our view misplaced as the Full Bench of the Supreme Court had inter alia held that High Courts and the Supreme Court under Articles 226 and 32 respectively is vested with the power to exercise judicial superintendence over the decisions of all courts and tribunals, being part of basic structure of the Constitution. The purpose for which the aforesaid case is sought to

be relied upon by counsel for the petitioner is mis-placed.

16. Another submission which has been raised before us is that in view of the order passed in CCP No.1687/2006, the Tribunal had no choice but to dismiss the O.A. We are unable to accept this submission also of the learned counsel for the petitioner as the Tribunal has noticed the entire background of the matter and thereafter rejected the O.A. Since the only window left open by the judgment dated 8.12.2005 for the petitioner after the dismissal of writ petition No.1049/1989, was with regard to the discrimination strangely, we find in this writ petition in paragraph 12 that the petitioner has given up this plea which reads as under :

12. That, thereafter, the petitioner challenged the aforesaid termination order before this Honble court vide CW (P) No.1049/89 which was taken over and decided by Honble Delhi High Court on 08.12.2005 and the termination order of the petitioner was upheld by the Honble High Court, but a certain relief was given which resulted in non relief to the petitioner till date and the petitioner will not like to press on that point through this writ application. Because the petitioner has stated earlier itself that it will base his argument only on the decision of Honble Supreme Court which is completely lacking in the judgment dated 08.12.2005 of this Honble Court. In this judgment the Honble High Court has quoted in para No.10 of the judgment but has not relied upon it and followed this same so that the petitioner would have got the relief on this issue and this is a grievance of the petitioner before this division bench against the order dated 08.12.2005 passed by this Honble Court by a single judge in WP (C) No.1049/89, which shall be clear from this following statement of law by this petitioner.

17. We have at the request of the counsel for the petitioner also enquired from Mr. Birbal with regard to the fate of the three persons whose names find mention in the judgment of 08.12.2005 and examined as to whether the petitioner has been discriminated. Out of the three persons mentioned by the petitioner, two persons, namely, Hari Ram and Perma Nand stand dismissed from service and thus it cannot be said that the petitioner stands treated differently. As far as Ramesh Kumar is concerned, no doubt he had been reinstated but both the petitioner and Ramesh Kumar in our view do not stand on an equal footing while an FIR was

registered against Ramesh Kumar under Sections 421/468/471 of Indian Penal Code and a Closure Report was filed which was accepted by the M.M. In the case of the petitioner, he was acquitted of the offences under Sections 304/308/34 of Indian Penal Code after complete trial and the order against Ramesh Kumar was passed much prior to the decision in the case of the petitioner. In any case this ground stands given up by the petitioner as noticed hereinabove. The issue with regard to the termination of the petitioner having attained finality as far as back in the year 2005 and the same having not been assailed, cannot be reopened in the present proceedings.

18. We find no infirmity in the judgment of the Central Administrative Tribunal. Resultantly, the writ petition is dismissed. Rule stands discharged. G.S.SISTANI, J
SANGITA DHINGRA SEHGAL, J JULY03 2015/sc

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